

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 JESUS SANTIAGO ALMODOVAR,

4 Plaintiff,

5 v.

6 CIVIL NO. 04-1821 (RLA)

7 VICTOR RIVERA, et al.,

8 Defendants.

9 **ORDER DENYING DEFENDANT'S MOTION TO DISMISS**

10 The Court has before it defendant VICTOR RIVERA GONZALEZ' (RIVERA) Motion to Dismiss the above complaint on the grounds that plaintiff has failed to state a claim under 42 U.S.C. § 1983 against him; that he is entitled to qualified immunity, and that the Court should not exercise jurisdiction over the claims arising from the Commonwealth of Puerto Rico's Constitution and statutes in the event that the federal claims are dismissed. See docket **No. 9**. Plaintiff has opposed (docket **No. 14**). For the reasons set forth below we hereby **DENY** defendant's Motion to Dismiss.

19 **STATEMENT OF THE CASE**

20 Plaintiff has invoked the subject-matter jurisdiction of this Court under 28 U.S.C. § 1331 and, pursuant to a civil rights violation claim under 42 U.S.C. §§ 1983 and 1988, for the violation of his rights protected by the First, Fourth, Fifth, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States. Plaintiff has also invoked the supplemental jurisdiction of this

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2 Court for his claims brought under Article II, Sections 1, 4, 7, and
3 8 of the Constitution of the Commonwealth of Puerto Rico, and
4 Articles 1802, et seq., of the Civil Code of Puerto Rico.

5 FACTUAL VERSION OF THE CASE

6 Plaintiff JESUS SANTIAGO ALMODOVAR (SANTIAGO) alleges that on
7 August 12, 2003, police officers JOSE MARTINEZ-MALAVE (MARTINEZ) and
8 IVAN BAHR-SILVA (BAHR), acting under color of state law, assaulted,
9 abused, insulted, and illegally detained and arrested him, resulting
10 in false charges being filed against him, which were dismissed at the
11 preliminary hearing stage. In addition, plaintiff alleges that at
12 the time of the events described in the complaint, RIVERA was the
13 Superintendent of the Puerto Rico Police Department, and as such the
14 person responsible for establishing the government policy concerning
15 the activities of the Drugs and Narcotics Division, its inspections,
16 raids, and interventions with citizens. SANTIAGO further asserts
17 that RIVERA was, at the time of the events detailed in the complaint,
18 the person responsible for the selection, adequate training,
19 monitoring, and supervision of police officers, including co-
20 defendants, MARTINEZ and BAHR. Plaintiff alleges that MARTINEZ and
21 BAHR were improperly trained, had poor psychological profiles, social
22 history and background, and showed an emotional inclination to
23 violence. Plaintiff further avers that notwithstanding the fact that
24 RIVERA knew or should have known of MARTINEZ' and BAHR's disciplinary
25 problems and inclinations to violence, he permitted or indifferently
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2 acquiesced with deliberate indifference and/or in a grossly negligent
3 manner, the violation of plaintiff's civil rights by allowing these
4 officers to work in the streets and intervene with citizens.
5 Inasmuch as RIVERA was responsible for monitoring, evaluating, and
6 disciplining of co-defendants, plaintiff alleges that RIVERA knew or
7 should have known of co-defendants' dangerous tendencies, inadequate
8 training, and disciplinary problems, at all times acting under color
9 of the laws, statutes, ordinances, regulations or customs of the
10 Commonwealth of Puerto Rico.

11 STANDARD FOR A MOTION TO DISMISS
12 UNDER FED. R. CIV. P. 12(b) (6)

13 In response to an initial pleading, a defendant may file a
14 motion to dismiss the complaint for failure to state a claim upon
15 which relief can be granted pursuant to Rule 12(b) (6). A complaint
16 should not be dismissed for failure to state a claim unless it
17 appears beyond doubts that the plaintiff can prove no set of facts in
18 support of his claim which would entitle him to relief. See Conley
19 v. Gibson, 355 U.S. 41, 45-46 (1957). The Court must accept as true
20 the well-pleaded allegations in the complaint and draw all reasonable
21 inferences in plaintiffs' favor. See Correa-Martínez v. Arrillaga-
22 Beléndez, 903 F.2d 49, 52 (1st Cir. 1990). However, the Court is not
23 obliged to "swallow the plaintiff's invective hook, line, and sinker;
24 bald assertions, unsupportable conclusions, periphrastic
25 circumlocutions, and the like need not be credited." Aulson v.
26 Blanchard, 83 F.3d 1, 3 (1st Cir. 1996); see also, Doyle v. Hasbro,

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2 Inc., 103 F.3d 186, 190 (1st Cir. 1996); Massachusetts School of Law
3 at Andover, Inc. v. American Bar Ass'n, 142 F.3d 26, 40 (1st Cir.
4 1998).

5 A complaint must set forth "factual allegations, either direct
6 or inferential, regarding each material element necessary to sustain
7 recovery under some actionable theory." Romero-Barceló v. Hernández-
8 Agosto, 75 F.3d 23, 28 n.2 (1st Cir. 1996) (quoting Gooley v. Mobil
9 Oil Corp., 851 F.2d 513, 515 (1st Cir. 1988)).

10 The primary purpose of a motion pursuant to Federal Rule of
11 Civil Procedure 12(b) ((6) is to challenge the legal theory, "not the
12 sufficiency of any evidence that might be adduced." Advanced
13 Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc., 988 F.2d
14 1157, 1160 (Fed. Cir. 1993). Accordingly, in analyzing RIVERA's
15 Motion to Dismiss, the Court shall consider as true all well pleaded
16 allegations in the complaint.

17 SUPERVISORY LIABILITY UNDER A 42 U.S.C. § 1983 CLAIM

18 Defendant RIVERA argues that the allegations in the above
19 captioned complaint are not enough to establish his liability for the
20 violation of civil rights suffered by plaintiff. RIVERA argues that
21 the allegations that he knew or should have known of co-defendants
22 MARTINEZ' and BAHR's disciplinary problems or that they were
23 inadequately selected or trained are not enough to establish a causal
24 link between him and the damages claimed by plaintiff. RIVERA's
25 arguments are flawed.

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2 In order to establish a claim under 42 U.S.C. § 1983, a
3 plaintiff must alleged two elements: "(1) that the conduct complained
4 of has been committed under color of state law, and (2) that this
5 conduct worked a denial of rights secured by the Constitution or laws
6 of the United States." See Barreto Rivera v. Medina-Vargas, 168 F.3d
7 42 (1st Cir. 1999). In Barreto-Rivera, the Court of Appeals for the
8 First Circuit stated:

9 A supervisor may be found liable under section
10 1983 on the basis of his own acts or omissions;
11 liability may not be predicated upon a theory of
12 respondeat superior. See Maldonado-Denis v.
13 Castillo Rodriguez, 23 F.3d 576, 581 (1st Cir.
14 1994) (citing Gutiérrez-Rodríguez v. Cartagena,
15 882 F.2d 553, 561 (1st cir. 1989)). A supervisor
16 may be found liable if the "supervisor's conduct
17 or inaction amounted to a reckless or callous
indifference to the constitutional rights of
others." Gutiérrez-Rodríguez, 882 F.2d at 562.
"[E]ven if a supervisor lacks actual knowledge
of censurable conduct, he may be liable for the
foreseeable consequences of such conduct if he
would have known of it but for his deliberate
indifference or willful blindness, and if he had
the power to alleviate it."

18 Maldonado-Denis, 23 F.3d at 582 (emphasis added).

19 A plaintiff must also show that there is "an
20 'affirmative link' between the street-level
21 misconduct and the action, or inaction, of
22 supervisory officials." Gutiérrez-Rodríguez, 882
23 F.2d at 562 (quoting Rizzo v. Goode, 423 U.S.
362, 371 (1976)). Barreto-Rivera v. Medina-
Vargas, 168 F.3d 42, 49 (1st Cir. 1999).

24 Id. at 48.

25 The First Circuit expressed that this affirmative link can be
26 established even if the supervisor did not participate directly in

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2 the conduct that transgressed plaintiff's civil rights. The Court
3 conveyed the following:

4 The causation requirement can be satisfied even
5 if the supervisor did not participate directly
6 in the conduct that violated a citizen's rights;
7 for example, a sufficient [causal] nexus may be
8 found if the supervisor knew of, overtly or
9 tacitly approved of, or purposely disregarded
10 the conduct. Consequently, deliberate
11 indifference to violations of constitutional
12 rights can forge the necessary linkage between
13 the acts or omissions of supervisory personnel
14 and the misconduct of their subordinates.
15 Maldonado-Denis, 23 F.3d at 582. A plaintiff
16 can establish a causal link "if there exists a
17 known history of widespread abuse sufficient to
18 alert a supervisor to ongoing violations,"

19 Id. Barreto-Rivera v. Medina-Vargas, 168 F.3d 42, 49 (1st Cir. 1999).

20 Furthermore, in Carmona v. Toledo, 215 F.3d 124 (1st Cir. 2000),
21 the First Circuit articulated the following:

22 "We are also unconvinced that much of the
23 evidence that plaintiffs requested is irrelevant
24 to the issue of supervisory liability, as the
25 supervisors suggest. Whether an individual
26 officer had a record of claims of excessive
force, improper searches, or other related
misconduct, as well as pertinent performance and
disciplinary history, is relevant to the
allegations that the officer's conduct was
linked to the supervisor's failure to properly
train, supervise, and discipline him. See
Barrero-Rivera v. Medina-Vargas, 168 F.3d 42, 49
(1st Cir. 1999) ("known history of widespread
abuse sufficient to alert supervisor to ongoing
violations" can subject supervisor to liability
even where he did not directly participate in
civil rights violation) (quoting Maldonado-Denis
v. Castillo-Rodríguez, 23 F.3d 576, 582 (1st Cir.
1994)). Moreover, information as to training
received by the officers is obviously germane to
the failure to train claim against the

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supervisors.” Carmona v. Toledo, 215 F.3d 124, 135 (1st Cir. 2000).

4 Following this line of thought, in Camilo-Robles v. Zapata
5 (Camilo Robles II), 175 F.3d 41, 47, the First Circuit court stated
6 that "...[u]nder such a theory, a supervisor may be brought to book
7 even though his actions have not directly abridged someone's rights;
8 it is enough that he has created or overlooked a clear risk of future
9 unlawful action by a lower-echelon actor over whom he had some degree
10 of control."

11 Taking as true all the allegations contained in the complaint,
12 plaintiff has established that at the time of the events described in
13 the above captioned complaint, RIVERA was the Superintendent of the
14 Puerto Rico Police Department, and as such, the person responsible
15 for establishing the government policy concerning its activities such
16 as inspections, raids, and interventions of the Drugs and Narcotics
17 Division.¹ RIVERA was the person responsible for the disciplinary and
18 supervisory actions with regards to the actions and omissions of co-
19 defendants.² Plaintiff has well pleaded that defendant RIVERA's
20 policies directly resulted in the inadequate selection and training
21 of co-defendants, BAHR and MARTINEZ. RIVERA's policies failed to
22 prevent, detect or punish incidents of unwarranted abuses against
23 citizens perpetrated by co-defendants, BAHR and MARTINEZ.

¹ See paragraph 6 of the complaint.

² See paragraphs 6 and 39 of the complaint.

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2 As evidenced by a review of the allegations of the above
3 captioned complaint, plaintiffs has successfully alleged that
4 defendant RIVERA failed, either in a grossly negligent manner or with
5 deliberate indifference, to adequately train, monitor, and/or
6 supervise co-defendants, BAHR and MARTINEZ, all of which resulted in
7 the violation of plaintiff's civil rights. Accordingly, RIVERA's
8 Motion to Dismiss as regards his supervisory liability is **DENIED**.
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10 QUALIFIED IMMUNITY

11 Public officials sued for civil rights violations under
12 42 U.S.C. § 1983 could avoid liability for money damages by showing
13 either that they did not violate a right clearly established under
14 the United States Constitution or federal law, or that they acted
15 with objective legal reasonableness. See Harlow v. Fitzgerald, 457
16 U.S. 800, 819 (1982); Camilo-Robles v. Hoyos (Camilo-Robles I), 151
17 F.3d 1 (1st Cir. 1998).

18 "When a supervisor requests qualified immunity in a section 1983
19 action, the 'clearly established' prong of the qualified immunity
20 inquiry is satisfied when (1) the subordinate's actions violated a
21 clearly established constitutional right; and (2) it was clearly
22 established that a supervisor would be liable for constitutional
23 violations perpetrated by the subordinates in that context." Camilo-
24 Robles I, at 6. (citations omitted).

25 As an additional ground in support of his motion, RIVERA argues
26 that he is entitled to qualified immunity from liability.

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2 Qualified immunity is an affirmative defense against liability,
3 which may be raised by state officials sued in their personal
4 capacity. See Gómez v. Toledo, 446 U.S. 635, 640 (1980); Scheuer v.
5 Rhodes, 416 U.S. 232 (1974). The general rule of qualified immunity
6 is that government officials performing discretionary functions
7 generally are shielded from liability for civil damages insofar as
8 their conduct does not violate "clearly established statutory or
9 constitutional rights of which a reasonable person would have known."
10 Harlow v. Fitzgerald, 427 U.S. 808, 818 (1982). This rule
11 concentrates on the objective reasonableness of the official's
12 conduct and eliminates from consideration all claims of the
13 official's subjective state of mind. Id. at 819. As the qualified
14 immunity defense has evolved, it has been stated by the Supreme Court
15 that "it provides ample protection to all but the plainly
16 incompetent." Malley v. Briggs, 475 U.S. 335, 341 (1986).

17 A defendant can establish a qualified immunity defense in one of
18 three ways; first, the defense should be sustained if the Court finds
19 that no constitutional right has been violated, even if the
20 allegations of plaintiff are established; second, even if the
21 interest asserted by the plaintiff is clearly of a type generally
22 protected by federal law, the defendant is entitled to immunity if
23 the right was not clearly established; third, even if the contours of
24 the plaintiff's federal rights and the official's permissible actions
25 were clearly delineated at the time of the acts complained of, the
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2 defendant may enjoy qualified immunity, if it was objectively
3 reasonable for him to believe that his acts did not violate those
4 rights. See Saucier v. Katz, 121 S. Ct. 2151, 2156-58 (2001).

5 Here, inquiry turns on the third prong of the analysis related
6 to the objective legal reasonableness of RIVERA's actions or
7 omissions. Taking as true the allegations of the complaint as we
8 must, RIVERA acquiesced to the violation of plaintiff's civil rights
9 by showing deliberate indifference to Bahr's and Martinez'
10 disciplinary problems, poor psychological profiles, and proneness to
11 violent behavior. In that manner he acquiesced to the violation of
12 plaintiff's civil rights at the hands of these officers. Moreover,
13 RIVERA failed to properly recruit, monitor, train, discipline, and
14 punish co-defendants, thus assenting to the illegal and
15 unconstitutional actions of these police officers. In that context,
16 RIVERA's actions and omissions cannot be considered objectively or
17 legally reasonable. As he had actual or constructive knowledge of
18 the grave risk of harm of letting these co-defendants work in the
19 streets intervening with citizens, and he failed to take the easily
20 available measures to address such risk. Accordingly, RIVERA's claim
21 of qualified immunity is unfounded and must be DENIED.

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2 CONCLUSION

3 As discussed herein, the well pleaded allegations in the above-
4 captioned complaint has set forth a cause of action against defendant
5 RIVERA for the violation of plaintiff's civil rights under the United
6 States Constitution and 42 U.S.C. § 1983. In addition, in the
7 present case qualified immunity is unwarranted since the violation
8 involved clearly established civil rights. RIVERA's actions and
9 omissions could not be deemed objectively reasonable since they
10 showed a deliberate indifference and/or reckless disregard for
11 plaintiff's constitutional rights. In view of the above, RIVERA's
12 Motion to Dismiss (docket No. 9) is hereby **DENIED**.

13 IT IS SO ORDERED.

14 San Juan, Puerto Rico, this 31st day of March, 2006.

16 _____
17 S/Raymond L. Acosta
RAYMOND L. ACOSTA
18 United States District Judge
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